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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAX JOSEPH PLOG-HOROWITZ,
THE CALGUNS FOUNDATION,
INC., and THE SECOND
AMENDMENT FOUNDATION,
INC.,

Plaintiffs,

vs.

KAMALA HARRIS, Attorney General
of California, CALIFORNIA
DEPARTMENT OF JUSTICE,
COTATI POLICE DEPARTMENT,
CITY OF COTATI, ANDREW
LYSSAND (CO0339) and DOES 1 TO
20,

Defendants.

Case No.

COMPLAINT^{1 2 3}

DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTH AMENDMENT

FOURTEENTH AMENDMENT

¹ A Notice of Related Case Re: *Haynie v. Harris*, 3:10-CV-01255 SI is filed concurrently with this COMPLAINT.

² A Notice of Related Case Re: *Richards v. Harris*, 3:11-CV-02493 SI is filed concurrently with this COMPLAINT.

³ A Notice of Related Case Re: *Richards v. Harris*, 3:11-CV-05580 SI is filed concurrently with this COMPLAINT.

INTRODUCTION

1. Plaintiff MAX PLOG-HOROWITZ is resident of Sonoma County, California. He is associated with and exercises membership rights in both the THE CALGUNS FOUNDATION, INC., and THE SECOND AMENDMENT FOUNDATION, INC.
2. On March 29, 2011, Officer ANDREW LYSSAND of the COTATI POLICE DEPARTMENT and an employee of the CITY OF COTATI, unlawfully seized two rifles from and instigated criminal proceedings against Plaintiff PLOG-HOROWITZ for possession of "assault weapons" under California law.
3. The firearms were not illegal under California law and the case against Plaintiff was dismissed. Plaintiff was unlawfully detained, and had property seized and was required to post bail, make court appearances and hire legal counsel due to Defendants' wrongful conduct.
4. Plaintiffs CALGUNS FOUNDATION, INC, and SECOND AMENDMENT FOUNDATION, INC., paid for PLOG-HOROWITZ's criminal defense.
5. Plaintiff PLOG-HOROWITZ, along with the Institutional Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT FOUNDATION, INC., seek declaratory relief that the California Penal Codes and Regulations defining Assault Weapons are unconstitutionally vague and ambiguous and therefore result in wrongful arrests and the chilling of a fundamental right to "keep and bear" arms of ordinary and common design.
6. Plaintiff MAX PLOG-HOROWITZ, along with the Institutional Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT FOUNDATION, INC., also seek monetary damages and injunctive relief against the COTATI POLICE DEPARTMENT, the CITY OF COTATI and ANDREW LYSSAND for their unlawful conduct that resulted in the posting of bail, lost wages and expenditures for criminal defense legal work.

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PARTIES

7. Plaintiff MAX PLOG-HOROWITZ is a natural person and citizen of the United States and of the State of California.

8. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, California. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearms laws, rights and privileges, and defending and protecting the civil rights of California gun owners. As part of CGF's mission to educate the public – and gun-owners in particular – about developments in California's firearm laws, CGF assists in the maintenance and contributes content to an internet site: CALGUNS FOUNDATION: Gun Rights. Civil Rights. Your Rights.

[<http://www.calgunsfoundation.org/>] On that website CGF informs its members and the public at large about pending civil and criminal cases, including but not limited to: arrests, convictions and appeals relating to California gun law. The website hosts forums and publishes notices that document the concerns that California gun owners have about possible arrest, prosecution and conviction for running afoul of California's vague and ambiguous laws relating to so-called Assault Weapons. CGF represents its members and supporters, which include California gun owners and Plaintiffs HAYNIE and RICHARDS. CGF brings this action on behalf of itself and its supporters, who possess all the indicia of membership.

9. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellvue, Washtington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action

1 focusing on the Constitutional right to privately owned and possess firearms,
 2 and the consequences of gun control. SAF brings this action on behalf of
 3 itself and its members.

4 10. Defendant KAMALA HARRIS is the Attorney General of the State of
 5 California and she is obligated to supervise her agency and comply with all
 6 statutory duties under California Law. She is charged with enforcing,
 7 interpreting and promulgating regulations regarding California's Assault
 8 Weapons Statutes. Furthermore, California Penal Code §§ 13500 *et seq.*,
 9 establishes a commission on Peace Officer Standards and Training that
 10 requires the DEPARTMENT OF JUSTICE, with the Attorney General as an
 11 *ex officio* member of the commission, which is to provide personnel, training
 12 and training material to cities and counties to insure an effective and
 13 professional level of law enforcement within the State of California.
 14 Furthermore, California Attorney General KAMALA HARRIS has concurrent
 15 prosecutorial jurisdiction with the state's 58 District Attorneys, and she is
 16 bound by a duty to seek substantial justice and avoid the filing of criminal
 17 charges in which she knows (or should know) are not supported by probable
 18 cause. HARRIS also has an independent duty to disclose information
 19 beneficial to the accused and by extension she has a duty to prevent wrongful
 20 arrests in the first place when she has the power to do so.

21 11. Defendant CALIFORNIA DEPARTMENT OF JUSTICE is an agency of the
 22 State of California, headed by the Attorney General of the State, with a
 23 statutory duty to enforce, administer and interpret the law and promulgate
 24 regulations regarding weapons identified by the California Legislature as
 25 "Assault Weapons." This agency also has the power to issue memorandums,
 26 bulletins and opinion letters to law enforcement agencies throughout the
 27 State regarding reasonable interpretations of what constitutes an "Assault
 28 Weapon" under California Law.

12. Defendant CITY OF COTATI POLICE DEPARTMENT is a state actor located in a political subdivision of the State of California, Sonoma County. Defendant CITY OF COTATI POLICE DEPARTMENT is responsible for setting the policies and procedures of that office, including but not limited to setting policy and conducting training and discipline of peace officers employed by Defendant.

13. Defendant CITY OF COTATI is a state actor located in a political subdivision of the State of California, Sonoma County. Defendant CITY OF COTATI is responsible for setting the policies and procedures of that office, including but not limited to setting policy and conducting training and discipline of peace officers employed by Defendant.

14. Defendant ANDREW LYSSAND (CO0339) was employed by the CITY OF COTATI POLICE DEPARTMENT and/or THE CITY OF COTATI for all relevant time periods.

15. At this time, Plaintiffs are ignorant of the names any additional individual Defendants who participated in the arrests of Plaintiff MAX PLOG-HOROWITZ. Plaintiffs therefore name these individual officers as DOE Defendants and reserves the right to amend this complaint when their true names are ascertained. Furthermore, if/when additional persons and entities are discovered to have assisted and/or lent support to the wrongful conduct of the Defendants named herein, Plaintiff reserves the right to amend this complaint to add those persons and/or entities as Defendants.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.

17. This Court has supplemental jurisdiction over any state law causes of action arising from the same operative facts under 28 U.S.C. § 1367.

18. Venue for this action is proper under 28 U.S.C. §§ 1391 and/or the Civil Local Rules for bringing an action in this district.

CONDITIONS PRECEDENT

19. All conditions precedent have been performed, and/or have occurred, and/or have been excused, and/or would be futile.

FACTS - Relating to Wrongful Arrest

20. On or about March 29, 2011, Defendant ANDREW LYSSAND (CO0339) seized two rifles and various other firearm parts and accessories from the Plaintiff MAX PLOG-HOROWITZ.

21. Plaintiff PLOG-HOROWITZ was subsequently arrested pursuant to an arrest warrant on July 19, 2011.

22. Based on reports prepared by Defendant ANDREW LYSSAND (CO0339) Plaintiff MAX PLOG-HOROWITZ was charged with two counts of illegal possession of an "assault weapon." Penal Code § 12280(b) in Case No.: SCR-604614 in Sonoma County.

23. On November 22, 2011, The California Department of Justice Bureau of Forensic Services issued a report that Plaintiffs' firearms were not "assault weapons."

24. On December 12, 2012, the Sonoma County District Attorney's Office dismissed all charges in the above-entitled case.

25. Although he was cleared by the government's own expert, the Sonoma County D.A. declined to stipulate to a finding of factual innocence.

26. The weapons in question – were common and ordinary firearms suitable for exercising the "right to keep and bear arms" under the Second Amendment to the United States Constitution.

27. PLOG-HOROWITZ lost time off of work. He was required to post bail. CALGUNS FOUNDATION, INC., again paid PLOG-HOROWITZ's criminal defense lawyer in an amount according to proof.

28. Following this arrest on charges of violating California Penal Code § 12280(b) – possession of an Assault Weapon – Plaintiff PLOG-HOROWITZ has a reasonable fear, that by exercising a fundamental right protected by the U.S. Constitution, he is realistically threatened by a repetition of wrongful arrests. He further contends that the claim of future injury cannot be written off as mere speculation. Plaintiff PLOG-HOROWITZ also bases his fear of repeated arrests on the information he obtains from the Calguns.net website the related cases set forth herein.

FACTS – Relating to Vague and Ambiguous Laws Impacting the Second Amendment

29. The CALIFORNIA DEPARTMENT OF JUSTICE is the State agency responsible for the training and education of law enforcement agencies with respect to “assault weapons” under Penal Code §§ 12276.5 and 12289.

a. Penal Code § 12276.5(c) states: “The Attorney General shall adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter.” [emphasis added]

b. Penal Code § 12289(a) states [in part]: “The Department of Justice shall conduct a public education and notification program regarding the registration of assault weapons and the definition of the weapons set forth in Section 12276.1.” [emphasis added]

30. California’s definitions of “assault weapons” are set forth at Penal Code §§ 12276 and 12276.1.

31. The California Code of Regulations interpreting the statutory definition of “assault weapons” are found at Title 11, Division 5, Chapters 39 & 40.

32. The Orange County Sheriff’s Department has issued a training bulletin about the “bullet button” to prevent wrongful arrests in that county.

33. The City of Sacramento has issued a training bulletin about the “bullet button” to prevent wrongful arrests in that jurisdiction.

34. The Calguns Foundation Inc., has published a flow-chart to identify weapons that are designated as "assault weapons" under California law.

35. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has promulgated an "Assault Weapons Identification Guide," (3rd edition, Nov. 2001) an 84-page publication which describes the Assault Weapons regulated in Penal Code sections 12276, 12276.1, and 12276.5. In the Guide, the Department acknowledges that a magazine is considered detachable when it "can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool."

36. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has declined to issue a statewide bulletin or other directive regarding the "bullet button."

37. Though it would not be unduly burdensome for Defendant CALIFORNIA DEPARTMENT OF JUSTICE to issue a bulletin regarding the technology of the "bullet button" and to develop a field test to insure state-wide compliance with the law, the CALIFORNIA DEPARTMENT OF JUSTICE insists:

- a. That this Court does not have the power to compel issuance of such a bulletin, and/or
- b. That the California Assault Weapon Statutes and Regulations are sufficiently clear that the risk of arrest and prosecution should be borne by the citizens of California and/or that the risks of paying damages for false arrest should be borne by local law enforcement agencies.

Based on the related litigation, Plaintiffs are prepared to accept Defendants' (DOJ) characterization that the Assault Weapon Statutes and Regulations that they are charged with interpreting, educating the public about and enforcing are not subject to any further clarification by their agency.

38. Instead, Plaintiffs will aver that the entire California Assault Weapon

Statutes and the Regulations derived therefrom are vague and ambiguous on their face and as applied to PLOG-HOROWITZ's arrest.

39. Furthermore, Plaintiffs allege that Defendant CALIFORNIA DEPARTMENT OF JUSTICE has contributed – through its policies, procedures and customs – to a state of general confusion of California's Assault Weapons laws thus rendering them hopelessly vague and ambiguous as applied; and thus an infringement of the Second Amendment to the United States Constitution.

FACTS – Department of Justice Creates Confusion

40. The formation of CGF was partially inspired by a desire to counteract a disinformation campaign orchestrated by the California Department of Justice (DOJ) in response to gun owners realizing the implications of the California Supreme Court Decision in *Harrot v. County of Kings* and the expiration of the Federal Assault Weapons laws.

41. In late 2005, various individuals and licensed gun stores began importing into California AR pattern rifles and the receivers for them.

42. In response to inquiries about the legality of importing and possessing certain AR and AK pattern rifles and receivers, DOJ began replying in their official letters that while THEY were of the opinion that these rifles were legal, local District Attorneys might disagree and prosecute anyway. All of these letters follow a similar pattern of declaring a certain gun part (receiver) legal to import into California and then warning the recipient that California's 58 District Attorneys may have a different opinion that could result in prosecution. Plaintiffs are in possession of the following:

- i. December 12, 2005, letter from DOJ to Ms. Amanda Star rendering an opinion about the legality of a Stag-15 Lower receiver but warning that local prosecutors may disagree and prosecute accordingly.

- ii. January 18, 2006, letter from DOJ to BST Guns also opining out the legality of firearms, but giving the same warning the 58 county prosecutors could potentially prosecute anyway.
- iii. December 28, 2005, letter from DOJ to Matthew Masuda.
- iv. December 27, 2005, letter from DOJ to Christopher Kjellberg.
- v. December 27, 2005, letter from DOJ to Kirk Haley.
- vi. December 28, 2005, letter from DOJ to Mark Mitzel.
- vii. December 28, 2005, letter from DOJ to Jason Paige.

43. From February to May 2006, the California Department of Justice issued a series of memorandums that were obtained as part of a California Public Records Request. Plaintiffs are in possession of these memoranda and they are remarkable because:

- a. The Department of Justice made changes to the various versions of these memorandum due to Jason Davis, then an attorney for the National Rifle Association, pointing out legal flaws in the various iterations.
- b. In all versions of the memorandum, the Department of Justice directly conflicted the previously published Assault Weapons Information Guide by stating that owners of a firearm with features had to, "permanently alter the firearm so that it cannot accept a detachable magazine." "Permanent alteration" is not required in the Penal Code, the Assault Weapons Information Guide, or the then existing California Code of Regulations 11 C.C.R. 5469 or the penal code.

44. On or about May 10, 2006, DOJ counsel Alison Merrilees informed a member of the public that the DOJ wished to create a test case, "[w]e are eagerly awaiting a test case on this, because we think we'll win." Plaintiffs are in possession of a true and correct copy of the email that was obtained as part of a Public Records Act request.

1 45. In May 2006, DOJ issued an internal memo to phone staff that stated, "It is
 2 DOJ's opinion that under current law, a semiautomatic centerfire rifle that is
 3 modified to be temporarily incapable of accepting a detachable magazine, but
 4 can be restored to accommodate a detachable magazines, is an assault
 5 weapons if it has any of the features listed in §12276.1(a)(1)," and
 6 "Individuals who alter a firearm designed and intended to accept a
 7 detachable magazine in an attempt to make it incapable of accepting a
 8 detachable magazine do so at their legal peril," stating further, "[w]hether or
 9 not such a firearm remains capable of accepting a detachable magazine is a
 10 question for law enforcement agencies, district attorneys, and ultimately
 11 juries of twelve persons, not the California Department of Justice."

12 Plaintiffs have a copy of this memorandum which was obtained as part of a
 13 Public Records Act Request.

14 46. On or about June 6, 2006, DOJ issued a Notice of Proposed Rulemaking. The
 15 proposed amendment would have "define[d] a sixth term, "capacity to accept
 16 a detachable magazine", as meaning "capable of accommodating a detachable
 17 magazine, but shall not be construed to include a firearm that has been
 18 permanently altered so that it cannot accommodate a detachable magazine."
 19 Plaintiffs are in possession of a true and correct copy of the notice.

20 47. On or about November 1, 2006, DOJ issued a "Text of Modified Regulations"
 21 The updated text attempted to define "detachable magazine" as "currently
 22 able to receive a detachable magazine or readily modifiable to receive a
 23 detachable magazine" and had other "permanency" requirements. Plaintiffs
 24 are in possession of a true and correct copy of the notice.

25 48. Plaintiff CGF alleges on information and belief, DOJ did not submit the
 26 aforementioned Modified Regulations to the Office of Administrative Law
 27 ("OAL") and thus the 2006 Rulemaking did not take effect.

28 49. On or about July 11, 2007, CGF (through Gene Hoffman, the Chairman of

CGF) petitioned the OAL to have them find that the continued publication of the "Important Notice" Memorandum after the 2006 Rulemaking that was not submitted to OAL was an "Underground Regulation."

50. On or about September 11, 2007, OAL accepted Hoffman's petition.

51. On or about September 21, 2007, OAL suspended its review as DOJ issued a certification on or about September 20, 2007, that stated, "[DOJ] reserves the right to interpret the law in any case-specific adjudication, as authorized in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557,572."

Plaintiffs are in possession of true and correct copies of the letters from the OAL along with DOJ's certification relating to these rule making issues.

52. The reservation in the certification of September 20, 2007, leads to uncertainty over whether the DOJ would take the position that permanence was required for modifications to a firearm so that the firearm would not have "the capacity to accept a detachable magazine."

53. On or about September 29, 2008, DOJ responded to a letter inquiry about the legality of selling a semiautomatic center fire rifle with an alternate version of the "bullet button" colloquially known as the Prince-50 kit. DOJ stated:

"Since there are no statutes, case law, or regulations concerning whether a rifle that is loaded with a fixed, removeable magazine can also be considered to have the 'capacity to accept a detachable magazine,' we are unable to declare rifles configured with the 'Prince 50 Kit' or 'bullet button' to be legal or illegal."

Plaintiffs are in possession of true and correct copies of this letter.

54. On or about November 3, 2008, DOJ replied to Kern County DA Edward Jagels:

"Since there are no statutes, case law, or regulations concerning whether a rifle that is loaded with a fixed, removeable magazine can also be considered to have the 'capacity to accept a detachable magazine,' we are unable to declare rifles configured with the 'Prince 50 Kit' or 'bullet button' to be legal or illegal."

1 Plaintiffs are in possession of a true and correct copy of this letter.

2 55. Not only is the CALIFORNIA DEPARTMENT OF JUSTICE claiming it has
3 no duty to issue a clarifying bulletin to the State's District Attorneys and
4 Law Enforcement Community, on this issue; they have apparently engaged
5 in a pattern of disinformation and confusion on the issue of whether a rifle
6 fitted with a device that makes it incapable of accepting a detachable
7 magazine is legal to own in California. It could be argued that CALIFORNIA
8 DEPARTMENT OF JUSTICE's firearms division has created such a state of
9 confusion that the entire statutory and regulatory scheme for defining
10 California Assault Weapons is hopelessly, and unconstitutionally vague and
11 ambiguous.

12 **FACTS – Calguns Foundation, Inc., Ongoing Efforts to**
13 **Assist Law Abiding Gun Owners**

14 56. The CALGUNS FOUNDATION, INC., has defended many incidents of law
15 abiding gun owners and retailers whose firearms were either seized, the
16 individual was arrested and/or charged with violating Assault Weapons
17 Control Act.

- 18 a. In approximately April 2007, Matthew Corwin was arrested and
19 charged with multiple violations of the AWCA. See *People v. Matthew*
20 *Corwin*, Case No. GA069547, Los Angeles Superior Court.
- 21 b. In June 2008, John Contos was arrested and charged in Solano County
22 with a violation of Penal Code § 12280 - possession/manufacturing of
23 Assault Weapons based on the allegation that his rifle had an illegal
24 thumb-hole stock. The case number was VCR198514-VF. CGF funded
25 the defense of Mr. Contos. The case was dismissed and the D.A.
26 stipulated to a finding of factual innocence.
- 27 c. In November 2008, John Crivello had a semiautomatic centerfire rifle
28 with a "bullet button" magazine release seized from his home in Santa

1 Cruz, California by the Santa Cruz Police Department. Counsel
 2 provided by CGF educated the Santa Cruz District Attorney's office.
 3 Counsel to CGF was advised that DOJ stated that it was unclear
 4 whether the bullet button was legal but that the District Attorney
 5 should file anyway. The District Attorney (ADA Dave Genochio and/or
 6 Charlie Baum) dropped charges and the firearm was returned to Mr.
 7 Crivello. CGF spent \$645.00 defending Mr. Crivello.

8 d. On or about November 3, 2009, Deputy J. Finley of Orange County
 9 Sheriff's Department seized a "bullet button" equipped Stag Arms AR-
 10 15 style firearm from Stan Sanders. CGF counsel was engaged to
 11 explain the legality of the firearm to the Orange County Sheriff's
 12 Department and the firearm was subsequently returned to Mr.
 13 Sanders. The Orange County Training Bulletin was issued partially in
 14 response to this incident. CGF spent \$650.00 defending Mr. Sanders.

15 e. On or about March 30, 2010, Robert Wolf was arrested by the
 16 Riverside County Sheriff's Department for possession of a
 17 semiautomatic centerfire rifle with a "Prince 50 Kit." CGF counsel
 18 intervened and had the case dismissed on or about November 11, 2010.
 19 CGF spent \$5,975.00 defending Mr. Wolf.

20 f. Please also see the related actions including but not limited to:

- 21 i. *Haynie v. Harris*, 3:10-CV-01255 SI.
- 22 ii. *Richards v. Harris*, 3:11-CV-02493 SI.
- 23 iii. *Richards v. Harris*, 3:11-CV-05580 SI.

24 57. Plaintiffs allege on information and belief that there may be other innocent
 25 gun owners, who without the resources of THE CALGUNS FOUNDATION,
 26 INC., and/or THE SECOND AMENDMENT FOUNDATION, were charged
 27 under these vague and ambiguous statutes/regulations and plead guilty (or
 28 no contest) to lesser charges to avoid a felony conviction.

**FACTS – Semi-Automatic, Center-Fire Rifles and Handguns
are “Arms” Protected by the Second Amendment.**

58. Plaintiffs herein allege that semi-automatic center-fire rifles and handguns with detachable magazines and any number of additional features (e.g., pistol grips, collapsible stocks, flash suppressors, etc...) are “arms” protected by the Second Amendment to the United States Constitution. Furthermore, to the extent that California seeks to regulate the manufacturing, acquisition and possession of semi-automatic, center-fire rifles with detachable magazines, it must define them in a way that is not vague and ambiguous.
59. Even assuming *arguendo* that Plaintiffs are wrong and some semi-automatic, center-fire rifles and handguns with detachable magazines are not protected by the Second Amendment – California’s “assault weapon” laws are still unconstitutional because innocent gun owners continue to be arrested for mere possession of the sub-class of these weapons that are legal and therefore absolutely protected by the Second Amendment.
60. Plaintiff herein allege that the state of confusion caused by the current vague and ambiguous statutes/regulations continues to result in the wrongful arrests of innocent gun-owners while they are exercising a fundamental “right to keep and bear” lawful firearms. These wrongful arrests and the chilling of fundamental rights violates the Second Amendment to the United States Constitution as that right is incorporated against state action through the Fourteenth Amendment.

**FIRST CLAIM FOR RELIEF:
SECOND AMENDMENT, UNITED STATES CONSTITUTION
42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF
ALL PLAINTIFFS vs DEFENDANTS: HARRIS AND
CALIFORNIA DEPT OF JUSTICE**

61. Paragraphs 1 through 60 are incorporated by reference as though fully set forth.
62. California’s “assault weapon” Statutes and Regulations are

1 unconstitutionally vague and ambiguous and have resulted in the wrongful
 2 arrest, detention and prosecution of law-abiding citizens exercising their
 3 Second Amendment right to 'keep and bear arms' that are in common use for
 4 lawful purposes.

5 63. California's "assault weapon" statutes and regulations are unconstitutionally
 6 vague and result in the wrongful confiscation of common and ordinary
 7 firearms, that are protected by the Second Amendment, from their law-
 8 abiding owners.

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 10 **SECOND CLAIM FOR RELIEF:**
FOURTH AMENDMENT | UNITED STATES CONSTITUTION
42 USC § 1983, 1988 - INJUNCTIVE RELIEF
 11 **ALL PLAINTIFFS vs DEFENDANTS: CITY OF COTATI,**
CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND.
 12

13 64. Paragraphs 1 through 63 are incorporated by reference as though fully set
 14 forth.

15 65. Plaintiffs MAX PLOG-HOROWITZ, THE CALGUNS FOUNDATION, INC.,
 16 and THE SECOND AMENDMENT FOUNDATION, INC., seek injunctive
 17 relief against the Defendants CITY OF COTATI and CITY OF COTATI
 18 POLICE DEPARTMENT and ANDREW LYSSAND that will require
 19 amendments to their policies and training to address:

- 20 a. Identification of "assault weapons" under California law.
- 21 b. Compliance with the Fourth Amendments.

22 66. Said injunctive relief will insure uniform and just application the Fourth
 23 Amendment and of California's Weapons Control Laws. Uniform and just
 24 enforcement of these laws are important because these laws effect the
 25 fundamental Second Amendment right of every law abiding citizen to keep
 26 and bear arms that are in common use for lawful purposes.

27 ////

28 ////

**THIRD CLAIM FOR RELIEF:
FOURTH AMENDMENT | UNITED STATES CONSTITUTION
42 USC § 1983, 1988 - DAMAGES
PLAINTIFFS vs DEFENDANTS: CITY OF COTATI,
CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND.**

67. Paragraphs 1 through 66 are incorporated by reference as though fully set forth.

68. Plaintiffs MAX PLOG-HOROWITZ and THE CALGUNS FOUNDATION, INC., seek damages against the Defendants CITY OF COTATI, CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND in an amount according to proof for losses incurred as a result of the wrongful seizure and prosecution of PLOG-HOROWITZ, including but not limited to expenditures (fees/costs) associated with the defense of the criminal charges and lost wages.

PRAYER FOR RELIEF

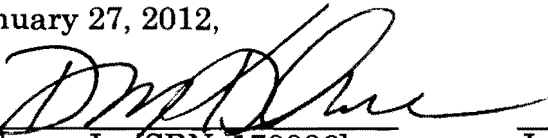
WHEREFORE, the Plaintiffs requests that this Court:

- A. Issue a declaratory judgment and/or injunctive relief that California's "assault weapon" statutes and regulations are unconstitutional.
- B. Injunctive relief against CITY OF COTATI, CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND. to prevent future violations of the Second and Fourth Amendment.
- C. Damages from CITY OF COTATI, CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND in an amount according to proof.
- D. Award costs of this action to all the Plaintiffs.
- E. Award reasonable attorney fees and costs to the Plaintiffs on all Claims of the complaint, including but not limited to fee/cost awards under 42 USC § 1983, 1988 and California Code of Civil Procedure § 1021.5.

1 F. Such other and further relief as this Court may deem appropriate.

2
3 Respectfully Submitted.

4 Dated: January 27, 2012,

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6 /s/ 
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10 Attorneys for Plaintiffs
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